

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 6

(SENATORS FERNS, BOLEY, CARMICHAEL, GAUNCH, LEONHARDT,
MULLINS, NOHE, TRUMP, BLAIR, PLYMALE, STOLLINGS, COLE
(MR. PRESIDENT) AND TAKUBO, *ORIGINAL SPONSORS*)

[PASSED FEBRUARY 23, 2015; IN EFFECT FROM PASSAGE.]

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COLE (MR. PRESIDENT) AND TAKUBO, *ORIGINAL SPONSORS*)

[Passed February 23, 2015; in effect from passage.]

AN ACT to amend and reenact §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all relating to medical professional liability generally; providing additional legislative findings and purposes related to medical professional liability; providing definitions; modifying qualifications for competency of experts who testify in medical professional liability actions; providing rebuttable presumptions and evidentiary requirements related to admission of certain government, health care provider or health care facility information; modifying maximum amount of recovery for, and availability of, noneconomic damages; clarifying that health care provider is not vicariously liable unless alleged agent does not maintain certain insurance; clarifying eligibility for, and application of, emergency medical services caps; providing methodology for determining amount of trauma care caps to account for

inflation; providing certain limitations of verdicts for past medical expenses of plaintiff; establishing effective date; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That §55-7B-1 of the Code of West Virginia, 1931, as amended, be repealed; that §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c and §55-7B-11 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all to read as follows:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-1. Legislative findings and declaration of purpose.

1 The Legislature finds and declares that:

2 The citizens of this state are entitled to the best medical
3 care and facilities available and that health care providers
4 offer an essential and basic service which requires that the
5 public policy of this state encourage and facilitate the
6 provision of such service to our citizens;

7 As in every human endeavor the possibility of injury or
8 death from negligent conduct commands that protection of
9 the public served by health care providers be recognized as
10 an important state interest;

11 Our system of litigation is an essential component of this
12 state's interest in providing adequate and reasonable
13 compensation to those persons who suffer from injury or
14 death as a result of professional negligence, and any
15 limitation placed on this system must be balanced with and
16 considerate of the need to fairly compensate patients who

17 have been injured as a result of negligent and incompetent
18 acts by health care providers;

19 Liability insurance is a key part of our system of
20 litigation, affording compensation to the injured while
21 fulfilling the need and fairness of spreading the cost of the
22 risks of injury;

23 A further important component of these protections is the
24 capacity and willingness of health care providers to monitor
25 and effectively control their professional competency, so as
26 to protect the public and ensure to the extent possible the
27 highest quality of care;

28 It is the duty and responsibility of the Legislature to
29 balance the rights of our individual citizens to adequate and
30 reasonable compensation with the broad public interest in the
31 provision of services by qualified health care providers and
32 health care facilities who can themselves obtain the
33 protection of reasonably priced and extensive liability
34 coverage;

35 In recent years, the cost of insurance coverage has risen
36 dramatically while the nature and extent of coverage has
37 diminished, leaving the health care providers, the health care
38 facilities and the injured without the full benefit of
39 professional liability insurance coverage;

40 Many of the factors and reasons contributing to the
41 increased cost and diminished availability of professional
42 liability insurance arise from the historic inability of this state
43 to effectively and fairly regulate the insurance industry so as
44 to guarantee our citizens that rates are appropriate, that
45 purchasers of insurance coverage are not treated arbitrarily
46 and that rates reflect the competency and experience of the
47 insured health care providers and health care facilities;

48 The unpredictable nature of traumatic injury health care
49 services often results in a greater likelihood of unsatisfactory
50 patient outcomes, a higher degree of patient and patient
51 family dissatisfaction and frequent malpractice claims,
52 creating a financial strain on the trauma care system of our
53 state, increasing costs for all users of the trauma care system
54 and impacting the availability of these services, requires
55 appropriate and balanced limitations on the rights of persons
56 asserting claims against trauma care health care providers,
57 this balance must guarantee availability of trauma care
58 services while mandating that these services meet all national
59 standards of care, to assure that our health care resources are
60 being directed towards providing the best trauma care
61 available;

62 The cost of liability insurance coverage has continued to
63 rise dramatically, resulting in the state's loss and threatened
64 loss of physicians, which, together with other costs and
65 taxation incurred by health care providers in this state, have
66 created a competitive disadvantage in attracting and retaining
67 qualified physicians and other health care providers;

68 Medical liability issues have reached critical proportions
69 for the state's long-term health care facilities, as: (1) Medical
70 liability insurance premiums for nursing homes in West
71 Virginia continue to increase and the number of claims per
72 bed has increased significantly; (2) the cost to the state
73 Medicaid program as a result of such higher premiums has
74 grown considerably in this period; (3) current medical
75 liability premium costs for some nursing homes constitute a
76 significant percentage of the amount of coverage; (4) these
77 high costs are leading some facilities to consider dropping
78 medical liability insurance coverage altogether; and (5) the
79 medical liability insurance crisis for nursing homes may soon
80 result in a reduction of the number of beds available to
81 citizens in need of long-term care; and

82 The modernization and structure of the health care
83 delivery system necessitate an update of provisions of this
84 article in order to facilitate and continue the objectives of this
85 article which are to control the increase in the cost of liability
86 insurance and to maintain access to affordable health care
87 services for our citizens.

88 Therefore, the purpose of this article is to provide a
89 comprehensive resolution of the matters and factors which
90 the Legislature finds must be addressed to accomplish the
91 goals set forth in this section. In so doing, the Legislature has
92 determined that reforms in the common law and statutory
93 rights of our citizens must be enacted together as necessary
94 and mutual ingredients of the appropriate legislative response
95 relating to:

96 (1) Compensation for injury and death;

97 (2) The regulation of rate making and other practices by
98 the liability insurance industry, including the formation of a
99 physicians' mutual insurance company and establishment of
100 a fund to assure adequate compensation to victims of
101 malpractice; and

102 (3) The authority of medical licensing boards to
103 effectively regulate and discipline the health care providers
104 under such board.

§55-7B-2. Definitions.

1 (a) "Board" means the State Board of Risk and Insurance
2 Management.

3 (b) "Collateral source" means a source of benefits or
4 advantages for economic loss that the claimant has received
5 from:

6 (1) Any federal or state act, public program or insurance
7 which provides payments for medical expenses, disability
8 benefits, including workers' compensation benefits, or other
9 similar benefits. Benefits payable under the Social Security
10 Act and Medicare are not considered payments from
11 collateral sources except for Social Security disability
12 benefits directly attributable to the medical injury in question;

13 (2) Any contract or agreement of any group, organization,
14 partnership or corporation to provide, pay for or reimburse
15 the cost of medical, hospital, dental, nursing, rehabilitation,
16 therapy or other health care services or provide similar
17 benefits, but excluding any amount that a group,
18 organization, partnership, corporation or health care provider
19 agrees to reduce, discount or write off of a medical bill;

20 (3) Any group accident, sickness or income disability
21 insurance, any casualty or property insurance, including
22 automobile and homeowners' insurance, which provides
23 medical benefits, income replacement or disability coverage,
24 or any other similar insurance benefits, except life insurance,
25 to the extent that someone other than the insured, including
26 the insured's employer, has paid all or part of the premium or
27 made an economic contribution on behalf of the plaintiff; or

28 (4) Any contractual or voluntary wage continuation plan
29 provided by an employer or otherwise or any other system
30 intended to provide wages during a period of disability.

31 (c) "Consumer Price Index" means the most recent
32 Consumer Price Index for All Consumers published by the
33 United States Department of Labor.

34 (d) "Emergency condition" means any acute traumatic
35 injury or acute medical condition which, according to
36 standardized criteria for triage, involves a significant risk of

37 death or the precipitation of significant complications or
38 disabilities, impairment of bodily functions or, with respect
39 to a pregnant woman, a significant risk to the health of the
40 unborn child.

41 (e) “Health care” means:

42 (1) Any act, service or treatment provided under,
43 pursuant to or in the furtherance of a physician’s plan of care,
44 a health care facility’s plan of care, medical diagnosis or
45 treatment;

46 (2) Any act, service or treatment performed or furnished,
47 or which should have been performed or furnished, by any
48 health care provider or person supervised by or acting under
49 the direction of a health care provider or licensed professional
50 for, to or on behalf of a patient during the patient’s medical
51 care, treatment or confinement, including, but not limited to,
52 staffing, medical transport, custodial care or basic care,
53 infection control, positioning, hydration, nutrition and similar
54 patient services; and

55 (3) The process employed by health care providers and
56 health care facilities for the appointment, employment,
57 contracting, credentialing, privileging and supervision of
58 health care providers.

59 (f) “Health care facility” means any clinic, hospital,
60 pharmacy, nursing home, assisted living facility, residential
61 care community, end-stage renal disease facility, home health
62 agency, child welfare agency, group residential facility,
63 behavioral health care facility or comprehensive community
64 mental health center, intellectual/developmental disability
65 center or program, or other ambulatory health care facility, in
66 and licensed, regulated or certified by the State of West
67 Virginia under state or federal law and any state-operated

68 institution or clinic providing health care and any related
69 entity to the health care facility.

70 (g) “Health care provider” means a person, partnership,
71 corporation, professional limited liability company, health
72 care facility, entity or institution licensed by, or certified in,
73 this state or another state, to provide health care or
74 professional health care services, including, but not limited
75 to, a physician, osteopathic physician, physician assistant,
76 advanced practice registered nurse, hospital, health care
77 facility, dentist, registered or licensed practical nurse,
78 optometrist, podiatrist, chiropractor, physical therapist,
79 speech-language pathologist and audiologist, occupational
80 therapist, psychologist, pharmacist, technician, certified
81 nursing assistant, emergency medical service personnel,
82 emergency medical services authority or agency, any person
83 supervised by or acting under the direction of a licensed
84 professional, any person taking actions or providing service
85 or treatment pursuant to or in furtherance of a physician’s
86 plan of care, a health care facility’s plan of care, medical
87 diagnosis or treatment; or an officer, employee or agent of a
88 health care provider acting in the course and scope of the
89 officer’s, employee’s or agent’s employment.

90 (h) “Medical injury” means injury or death to a patient
91 arising or resulting from the rendering of or failure to render
92 health care.

93 (i) “Medical professional liability” means any liability for
94 damages resulting from the death or injury of a person for
95 any tort or breach of contract based on health care services
96 rendered, or which should have been rendered, by a health
97 care provider or health care facility to a patient. It also means
98 other claims that may be contemporaneous to or related to the
99 alleged tort or breach of contract or otherwise provided, all in
100 the context of rendering health care services.

101 (j) “Medical professional liability insurance” means a
102 contract of insurance or any actuarially sound self-funding
103 program that pays for the legal liability of a health care
104 facility or health care provider arising from a claim of
105 medical professional liability. In order to qualify as medical
106 professional liability insurance for purposes of this article, a
107 self-funding program for an individual physician must meet
108 the requirements and minimum standards set forth in section
109 twelve of this article.

110 (k) “Noneconomic loss” means losses, including, but not
111 limited to, pain, suffering, mental anguish and grief.

112 (l) “Patient” means a natural person who receives or
113 should have received health care from a licensed health care
114 provider under a contract, expressed or implied.

115 (m) “Plaintiff” means a patient or representative of a
116 patient who brings an action for medical professional liability
117 under this article.

118 (n) “Related entity” means any corporation, foundation,
119 partnership, joint venture, professional limited liability
120 company, limited liability company, trust, affiliate or other
121 entity under common control or ownership, whether directly
122 or indirectly, partially or completely, legally, beneficially or
123 constructively, with a health care provider or health care
124 facility; or which owns directly, indirectly, beneficially or
125 constructively any part of a health care provider or health
126 care facility.

127 (o) “Representative” means the spouse, parent, guardian,
128 trustee, attorney or other legal agent of another.

§55-7B-7. Testimony of expert witness on standard of care.

1 (a) The applicable standard of care and a defendant's
2 failure to meet the standard of care, if at issue, shall be
3 established in medical professional liability cases by the
4 plaintiff by testimony of one or more knowledgeable,
5 competent expert witnesses if required by the court. A
6 proposed expert witness may only be found competent to
7 testify if the foundation for his or her testimony is first laid
8 establishing that: (1) The opinion is actually held by the
9 expert witness; (2) the opinion can be testified to with
10 reasonable medical probability; (3) the expert witness
11 possesses professional knowledge and expertise coupled with
12 knowledge of the applicable standard of care to which his or
13 her expert opinion testimony is addressed; (4) the expert
14 witness's opinion is grounded on scientifically valid peer-
15 reviewed studies if available; (5) the expert witness maintains
16 a current license to practice medicine with the appropriate
17 licensing authority of any state of the United States:
18 *Provided*, That the expert witness's license has not been
19 revoked or suspended in the past year in any state; and (6) the
20 expert witness is engaged or qualified in a medical field in
21 which the practitioner has experience and/or training in
22 diagnosing or treating injuries or conditions similar to those
23 of the patient. If the witness meets all of these qualifications
24 and devoted, at the time of the medical injury, sixty percent
25 of his or her professional time annually to the active clinical
26 practice in his or her medical field or specialty, or to teaching
27 in his or her medical field or speciality in an accredited
28 university, there shall be a rebuttable presumption that the
29 witness is qualified as an expert. The parties shall have the
30 opportunity to impeach any witness's qualifications as an
31 expert. Financial records of an expert witness are not
32 discoverable or relevant to prove the amount of time the
33 expert witness spends in active practice or teaching in his or
34 her medical field unless good cause can be shown to the
35 court.

36 (b) Nothing contained in this section limits a trial court's
37 discretion to determine the competency or lack of
38 competency of a witness on a ground not specifically
39 enumerated in this section.

§55-7B-7a. Admissibility and use of certain information.

1 (a) In an action brought, there is a rebuttable presumption
2 that the following information may not be introduced unless
3 it applies specifically to the injured person or it involves
4 substantially similar conduct that occurred within one year of
5 the particular incident involved:

6 (1) A state or federal survey, audit, review or other report
7 of a health care provider or health care facility;

8 (2) Disciplinary actions against a health care provider's
9 license, registration or certification;

10 (3) An accreditation report of a health care provider or
11 health care facility; and

12 (4) An assessment of a civil or criminal penalty.

13 (b) In any action brought, if the health care facility or
14 health care provider demonstrates compliance with the
15 minimum staffing requirements under state law, the health
16 care facility or health care provider is entitled to a rebuttable
17 presumption that appropriate staffing was provided.

18 (c) Information under this section may only be introduced
19 in a proceeding if it is otherwise admissible under the West
20 Virginia Rules of Evidence.

§55-7B-8. Limit on liability for noneconomic loss.

1 (a) In any professional liability action brought against a
2 health care provider pursuant to this article, the maximum
3 amount recoverable as compensatory damages for
4 noneconomic loss may not exceed \$250,000 for each
5 occurrence, regardless of the number of plaintiffs or the
6 number of defendants or, in the case of wrongful death,
7 regardless of the number of distributees, except as provided
8 in subsection (b) of this section.

9 (b) The plaintiff may recover compensatory damages for
10 noneconomic loss in excess of the limitation described in
11 subsection (a) of this section, but not in excess of \$500,000
12 for each occurrence, regardless of the number of plaintiffs or
13 the number of defendants or, in the case of wrongful death,
14 regardless of the number of distributees, where the damages
15 for noneconomic losses suffered by the plaintiff were for: (1)
16 Wrongful death; (2) permanent and substantial physical
17 deformity, loss of use of a limb or loss of a bodily organ
18 system; or (3) permanent physical or mental functional injury
19 that permanently prevents the injured person from being able
20 to independently care for himself or herself and perform life-
21 sustaining activities.

22 (c) On January 1, 2004, and in each year thereafter, the
23 limitation for compensatory damages contained in
24 subsections (a) and (b) of this section shall increase to
25 account for inflation by an amount equal to the Consumer
26 Price Index published by the United States Department of
27 Labor, not to exceed one hundred fifty percent of the amounts
28 specified in said subsections.

29 (d) The limitations on noneconomic damages contained
30 in subsections (a), (b), (c) and (e) of this section are not
31 available to any defendant in an action pursuant to this article
32 which does not have medical professional liability insurance
33 in the aggregate amount of at least \$1 million for each

34 occurrence covering the medical injury which is the subject
35 of the action.

36 (e) If subsection (a) or (b) of this section, as enacted
37 during the 2003 regular session of the Legislature, or the
38 application thereof to any person or circumstance, is found by
39 a court of law to be unconstitutional or otherwise invalid, the
40 maximum amount recoverable as damages for noneconomic
41 loss in a professional liability action brought against a health
42 care provider under this article shall thereafter not exceed \$1
43 million.

§55-7B-9. Several liability.

1 (a) In the trial of a medical professional liability action
2 under this article involving multiple defendants, the trier of
3 fact shall report its findings on a form provided by the court
4 which contains each of the possible verdicts as determined by
5 the court. Unless otherwise agreed by all the parties to the
6 action, the jury shall be instructed to answer special
7 interrogatories, or the court, acting without a jury, shall make
8 findings as to:

9 (1) The total amount of compensatory damages
10 recoverable by the plaintiff;

11 (2) The portion of the damages that represents damages
12 for noneconomic loss;

13 (3) The portion of the damages that represents damages
14 for each category of economic loss;

15 (4) The percentage of fault, if any, attributable to each
16 plaintiff; and

17 (5) The percentage of fault, if any, attributable to each of
18 the defendants.

19 (b) In assessing percentages of fault, the trier of fact shall
20 consider only the fault of the parties in the litigation at the
21 time the verdict is rendered and may not consider the fault of
22 any other person who has settled a claim with the plaintiff
23 arising out of the same medical injury: *Provided*, That, upon
24 the creation of the Patient Injury Compensation Fund
25 provided for in article twelve-c, chapter twenty-nine of this
26 code, or of some other mechanism for compensating a
27 plaintiff for any amount of economic damages awarded by
28 the trier of fact which the plaintiff has been unable to collect,
29 the trier of fact shall, in assessing percentages of fault,
30 consider the fault of all alleged parties, including the fault of
31 any person who has settled a claim with the plaintiff arising
32 out of the same medical injury.

33 (c) If the trier of fact renders a verdict for the plaintiff, the
34 court shall enter judgment of several, but not joint, liability
35 against each defendant in accordance with the percentage of
36 fault attributed to the defendant by the trier of fact.

37 (d) To determine the amount of judgment to be entered
38 against each defendant, the court shall first, after adjusting
39 the verdict as provided in section nine-a of this article, reduce
40 the adjusted verdict by the amount of any preverdict
41 settlement arising out of the same medical injury. The court
42 shall then, with regard to each defendant, multiply the total
43 amount of damages remaining, with interest, by the
44 percentage of fault attributed to each defendant by the trier of
45 fact. The resulting amount of damages, together with any
46 post-judgment interest accrued, shall be the maximum
47 recoverable against the defendant.

48 (e) Upon the creation of the Patient Injury Compensation
49 Fund provided for in article twelve-c, chapter twenty-nine of
50 this code, or of some other mechanism for compensating a
51 plaintiff for any amount of economic damages awarded by
52 the trier of fact which the plaintiff has been unable to collect,
53 the court shall, in determining the amount of judgment to be
54 entered against each defendant, first multiply the total amount
55 of damages, with interest, recoverable by the plaintiff by the
56 percentage of each defendant's fault and that amount,
57 together with any post-judgment interest accrued, is the
58 maximum recoverable against said defendant. Prior to the
59 court's entry of the final judgment order as to each defendant
60 against whom a verdict was rendered, the court shall reduce
61 the total jury verdict by any amounts received by a plaintiff
62 in settlement of the action. When any defendant's percentage
63 of the verdict exceeds the remaining amounts due the plaintiff
64 after the mandatory reductions, each defendant shall be liable
65 only for the defendant's pro rata share of the remainder of the
66 verdict as calculated by the court from the remaining
67 defendants to the action. The plaintiff's total award may
68 never exceed the jury's verdict less any statutory or court-
69 ordered reductions.

70 (f) Nothing in this section is meant to eliminate or
71 diminish any defenses or immunities which exist as of the
72 effective date of this section, except as expressly noted in this
73 section.

74 (g) Nothing in this article is meant to preclude a health
75 care provider from being held responsible for the portion of
76 fault attributed by the trier of fact to any person acting as the
77 health care provider's agent or servant or to preclude
78 imposition of fault otherwise imputable or attributable to the
79 health care provider under claims of vicarious liability. A
80 health care provider may not be held vicariously liable for the
81 acts of a nonemployee pursuant to a theory of ostensible

82 agency unless the alleged agent does not maintain
83 professional liability insurance covering the medical injury
84 which is the subject of the action in the aggregate amount of
85 at least \$1 million for each occurrence.

**§55-7B-9a. Reduction in compensatory damages for economic losses for
payments from collateral sources for the same injury.**

1 (a) In any action arising after the effective date of this
2 section, a defendant who has been found liable to the plaintiff
3 for damages for medical care, rehabilitation services, lost
4 earnings or other economic losses may present to the court,
5 after the trier of fact has rendered a verdict, but before entry
6 of judgment, evidence of payments the plaintiff has received
7 for the same injury from collateral sources.

8 (b) In a hearing held pursuant to subsection (a) of this
9 section, the defendant may present evidence of future
10 payments from collateral sources if the court determines that:

11 (1) There is a preexisting contractual or statutory
12 obligation on the collateral source to pay the benefits;

13 (2) The benefits, to a reasonable degree of certainty, will
14 be paid to the plaintiff for expenses the trier of fact has
15 determined the plaintiff will incur in the future; and

16 (3) The amount of the future expenses is readily reducible
17 to a sum certain.

18 (c) In a hearing held pursuant to subsection (a) of this
19 section, the plaintiff may present evidence of the value of
20 payments or contributions he or she has made to secure the
21 right to the benefits paid by the collateral source.

22 (d) After hearing the evidence presented by the parties,
23 the court shall make the following findings of fact:

17

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24 (1) The total amount of damages for economic loss found
25 by the trier of fact;

26 (2) The total amount of damages for each category of
27 economic loss found by the trier of fact;

28 (3) The total amount of allowable collateral source
29 payments received or to be received by the plaintiff for the
30 medical injury which was the subject of the verdict in each
31 category of economic loss; and

32 (4) The total amount of any premiums or contributions
33 paid by the plaintiff in exchange for the collateral source
34 payments in each category of economic loss found by the
35 trier of fact.

36 (e) The court shall subtract the total premiums the
37 plaintiff was found to have paid in each category of economic
38 loss from the total collateral source benefits the plaintiff
39 received with regard to that category of economic loss to
40 arrive at the net amount of collateral source payments.

41 (f) The court shall then subtract the net amount of
42 collateral source payments received or to be received by the
43 plaintiff in each category of economic loss from the total
44 amount of damages awarded the plaintiff by the trier of fact
45 for that category of economic loss to arrive at the adjusted
46 verdict.

47 (g) The court may not reduce the verdict rendered by the
48 trier of fact in any category of economic loss to reflect:

49 (1) Amounts paid to or on behalf of the plaintiff which
50 the collateral source has a right to recover from the plaintiff
51 through subrogation, lien or reimbursement;

52 (2) Amounts in excess of benefits actually paid or to be
53 paid on behalf of the plaintiff by a collateral source in a
54 category of economic loss;

55 (3) The proceeds of any individual disability or income
56 replacement insurance paid for entirely by the plaintiff;

57 (4) The assets of the plaintiff or the members of the
58 plaintiff's immediate family; or

59 (5) A settlement between the plaintiff and another
60 tortfeasor.

61 (h) After determining the amount of the adjusted verdict,
62 the court shall enter judgment in accordance with the
63 provisions of section nine of this article.

**§55-7B-9c. Limit on liability for treatment of emergency conditions for
which patient is admitted to a designated trauma center;
exceptions; emergency rules.**

1 (a) In any action brought under this article for injury to or
2 death of a patient as a result of health care services or
3 assistance rendered in good faith and necessitated by an
4 emergency condition for which the patient enters a health
5 care facility designated by the Office of Emergency Medical
6 Services as a trauma center, including health care services or
7 assistance rendered in good faith by a licensed emergency
8 medical services authority or agency, certified emergency
9 medical service personnel or an employee of a licensed
10 emergency medical services authority or agency, the total
11 amount of civil damages recoverable may not exceed
12 \$500,000 for each occurrence, exclusive of interest computed
13 from the date of judgment, and regardless of the number of
14 plaintiffs or the number of defendants or, in the case of
15 wrongful death, regardless of the number of distributees.

16 (b) The limitation of liability in subsection (a) of this
17 section also applies to any act or omission of a health care
18 provider in rendering continued care or assistance in the
19 event that surgery is required as a result of the emergency
20 condition within a reasonable time after the patient's
21 condition is stabilized.

22 (c) The limitation on liability provided under subsection
23 (a) of this section does not apply to any act or omission in
24 rendering care or assistance which:

25 (1) Occurs after the patient's condition is stabilized and
26 the patient is capable of receiving medical treatment as a
27 nonemergency patient; or

28 (2) Is unrelated to the original emergency condition.

29 (d) In the event that: (1) A physician provides follow-up
30 care to a patient to whom the physician rendered care or
31 assistance pursuant to subsection (a) of this section; and (2)
32 a medical condition arises during the course of the follow-up
33 care that is directly related to the original emergency
34 condition for which care or assistance was rendered pursuant
35 to said subsection, there is rebuttable presumption that the
36 medical condition was the result of the original emergency
37 condition and that the limitation on liability provided by said
38 subsection applies with respect to that medical condition.

39 (e) There is a rebuttable presumption that a medical
40 condition which arises in the course of follow-up care
41 provided by the designated trauma center health care provider
42 who rendered good faith care or assistance for the original
43 emergency condition is directly related to the original
44 emergency condition where the follow-up care is provided
45 within a reasonable time after the patient's admission to the
46 designated trauma center.

47 (f) The limitation on liability provided under subsection
48 (a) of this section does not apply where health care or
49 assistance for the emergency condition is rendered:

50 (1) In willful and wanton or reckless disregard of a risk
51 of harm to the patient; or

52 (2) In clear violation of established written protocols for
53 triage and emergency health care procedures developed by
54 the Office of Emergency Medical Services in accordance
55 with subsection (e) of this section. In the event that the Office
56 of Emergency Medical Services has not developed a written
57 triage or emergency medical protocol by the effective date of
58 this section, the limitation on liability provided under
59 subsection (a) of this section does not apply where health
60 care or assistance is rendered under this section in violation
61 of nationally recognized standards for triage and emergency
62 health care procedures.

63 (g) The Office of Emergency Medical Services shall,
64 prior to the effective date of this section, develop a written
65 protocol specifying recognized and accepted standards for
66 triage and emergency health care procedures for treatment of
67 emergency conditions necessitating admission of the patient
68 to a designated trauma center.

69 (h) In its discretion, the Office of Emergency Medical
70 Services may grant provisional trauma center status for a period
71 of up to one year to a health care facility applying for
72 designated trauma center status. A facility given provisional
73 trauma center status is eligible for the limitation on liability
74 provided in subsection (a) of this section. If, at the end of the
75 provisional period, the facility has not been approved by the
76 Office of Emergency Medical Services as a designated trauma
77 center, the facility is no longer eligible for the limitation on
78 liability provided in subsection (a) of this section.

79 (i) The Commissioner of the Bureau for Public Health
80 may grant an applicant for designated trauma center status a
81 one-time only extension of provisional trauma center status,
82 upon submission by the facility of a written request for
83 extension, accompanied by a detailed explanation and plan of
84 action to fulfill the requirements for a designated trauma
85 center. If, at the end of the six-month period, the facility has
86 not been approved by the Office of Emergency Medical
87 Services as a designated trauma center, the facility no longer
88 has the protection of the limitation on liability provided in
89 subsection (a) of this section.

90 (j) If the Office of Emergency Medical Services
91 determines that a health care facility no longer meets the
92 requirements for a designated trauma center, it shall revoke
93 the designation, at which time the limitation on liability
94 established by subsection (a) of this section ceases to apply
95 to that health care facility for services or treatment rendered
96 thereafter.

97 (k) The Legislature hereby finds that an emergency exists
98 compelling promulgation of an emergency rule, consistent
99 with the provisions of this section, governing the criteria for
100 designation of a facility as a trauma center or provisional
101 trauma center and implementation of a statewide
102 trauma/emergency care system. The Legislature therefore
103 directs the Secretary of the Department of Health and Human
104 Resources to file, on or before July 1, 2003, emergency rules
105 specifying the criteria for designation of a facility as a trauma
106 center or provisional trauma center in accordance with
107 nationally accepted and recognized standards and governing
108 the implementation of a statewide trauma/emergency care
109 system. The rules governing the statewide trauma/emergency
110 care system shall include, but not be limited to:

111 (1) System design, organizational structure and operation,
112 including integration with the existing emergency medical
113 services system;

114 (2) Regulation of facility designation, categorization and
115 credentialing, including the establishment and collection of
116 reasonable fees for designation; and

117 (3) System accountability, including medical review and
118 audit to assure system quality. Any medical review
119 committees established to assure system quality shall include
120 all levels of care, including emergency medical service
121 providers, and both the review committees and the providers
122 shall qualify for all the rights and protections established in
123 article three-c, chapter thirty of this code.

124 (l) On January 1, 2016, and in each year after that, the
125 limitation for civil damages contained in subsection (a) of
126 this section shall increase to account for inflation by an
127 amount equal to the Consumer Price Index published by the
128 United States Department of Labor, not to exceed one
129 hundred fifty percent of said subsection.

§55-7B-9d. Adjustment of verdict for past medical expenses.

1 A verdict for past medical expenses is limited to:

2 (1) The total amount of past medical expenses paid by or
3 on behalf of the plaintiff; and

4 (2) The total amount of past medical expenses incurred
5 but not paid by or on behalf of the plaintiff for which the
6 plaintiff or another person on behalf of the plaintiff is
7 obligated to pay.

§55-7B-10. Effective date; applicability of provisions.

1 (a) The provisions of House Bill 149, enacted during the
2 first extraordinary session of the Legislature, 1986, shall be
3 effective at the same time that the provisions of Enrolled
4 Senate Bill 714, enacted during the regular session, 1986,
5 become effective, and the provisions of said House Bill 149
6 shall be deemed to amend the provisions of Enrolled Senate
7 Bill 714. The provisions of this article shall not apply to
8 injuries which occur before the effective date of this said
9 Enrolled Senate Bill 714.

10 The amendments to this article as provided in House Bill
11 601, enacted during the sixth extraordinary session of the
12 Legislature, 2001, apply to all causes of action alleging
13 medical professional liability which are filed on or after
14 March 1, 2002.

15 The amendments to this article provided in Enrolled
16 Committee Substitute for House Bill No. 2122 during the
17 regular session of the Legislature, 2003, apply to all causes of
18 action alleging medical professional liability which are filed
19 on or after July 1, 2003.

20 (b) The amendments to this article provided in Enrolled
21 Committee Substitute for Senate Bill No. 6 during the regular
22 session of the Legislature, 2015, apply to all causes of action
23 alleging medical professional liability which are filed on or
24 after July 1, 2015.

§55-7B-11. Severability.

1 (a) If any provision of this article as enacted during the
2 first extraordinary session of the Legislature, 1986, in House
3 Bill 149, or as enacted during the regular session of the
4 Legislature, 1986, in Senate Bill 714, or as enacted during the
5 regular session of the Legislature, 2015, or the application
6 thereof to any person or circumstance is held invalid, the

7 invalidity does not affect other provisions or applications of
8 this article, and to this end, the provisions of this article are
9 declared to be severable.

10 (b) If any provision of the amendments to section five of
11 this article, any provision of section six-d of this article or
12 any provision of the amendments to section eleven, article
13 six, chapter fifty-six of this code as provided in House Bill
14 601, enacted during the sixth extraordinary session of the
15 Legislature, 2001, is held invalid, or the application thereof
16 to any person is held invalid, then, notwithstanding any other
17 provision of law, every other provision of said House Bill
18 601 shall be deemed invalid and of no further force and
19 effect.

20 (c) If any provision of the amendments to section six or
21 ten of this article or any provision of section six-a, six-b or
22 six-c of this article as provided in House Bill 601, enacted
23 during the sixth extraordinary session of the Legislature,
24 2001, is held invalid, the invalidity does not affect other
25 provisions or applications of this article, and to this end, such
26 provisions are deemed severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2015.

.....
Governor